

## Executive Director's Report

### ARGOS informational report

Following VMS discussions at the April meeting, including a presentation from the Marine Exchange which discussed two-way communication options, Sharon Moesel, Director of Marketing Operations and Government Relations for North American CLS, Inc., has requested the opportunity to provide specific information regarding the ARGOS system (letter under Item B-1(a)). She will describe the ARGOS system, how it works, its strengths and limitations, and the process to achieve NMFS approval. We are providing our meeting room here, at 6:00 pm Wednesday evening, for that presentation. Council members, AP members, and the general public are welcome to attend.

### VMS presentation by NMFS Enforcement

Also in this room on Thursday evening at 6:00 pm, NMFS Office of Enforcement will hold a VMS informational workshop, also open to everyone. Mr. Guy Holt will provide an overview of VMS requirements and a nuts and bolts description of VMS operations, and will be available to answer questions from fishermen and others regarding implementation of VMS requirements.

### Visiting Russian Fishermen

I've been informed there are a couple of visitors to Dutch Harbor here from Russia who will be, among other things, observing parts of our Council meeting. I understand that Anna Povolskaya and Anton Semenov are here as guests of the Unalaska Native Fishermen's Association and the Alaska Marine Conservation Council, and would enjoy meeting people and learning more about our management process.

### Process reminder to the public

We often receive written testimony during the course of a meeting, usually in conjunction with someone's oral testimony. A few Council members have asked me to remind folks to please include a statement of the source of the testimony and the date. Similarly, oral testimony should always include identification of the testifier and the interests of the testifier in the subject of that testimony. The actual language from the Magnuson-Stevens Act on this issue states: "*All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement*". Keeping to these guidelines will help our meeting run smoother and will also enable staff to keep better track of the administrative record.

### Oceana petition and draft response

Item B-1(b) is a copy of the petition submitted to NMFS from Oceana requesting rulemaking to implement bycatch controls in the Nation's fisheries (with a copy of the letter from Dr. Hogarth specifically requesting Council comment on this petition, due by June 17). I have drafted comments which I will distribute at this meeting. After you have reviewed this draft, we can circle back to this issue later in the meeting, or you can provide me your comments individually so that I can submit these by the June 17 due date.

## IPHC nomination for groundfish Plan Teams

Item B-1(c) is a letter from the IPHC nominating Dr. Bill Clark (former SSC member) to replace Gregg Williams on the groundfish Plan Teams. Gregg's duties at the IPHC no longer allow him to participate on the Plan Teams, and Dr. Clark's acknowledged expertise in stock assessment and population dynamics will make him a valuable addition to the Teams. We had this letter before us in April, but in the heat of the meeting I forgot to remind the Council to make the necessary approval of this appointment. The SSC has seen the nomination and supports his appointment.

## Council Chairmen's meeting

Just last week we had the privilege of hosting the annual Council Chairmen's meeting in Sitka, Alaska. Each year the Chair, Vice-Chair, and Executive Director from each of the eight regional Councils around the country meet with representatives from NMFS, the Coast Guard, and other agencies to discuss issues of national importance to our management process. We had representatives from NMFS headquarters and the Regional Administrators from each region, NOAA General Counsel, the Coast Guard, National Ocean Service, Department of Interior, and Congressional staff in attendance. Major discussion topics included Magnuson-Stevens Act reauthorization issues; other legislative initiatives; the Oceana petition; annual Status of Stocks report to Congress; current and future agency and Council budgets; recent ESA related litigation; the regulatory streamlining process outlined by Dr. Hogarth last fall (which will have significant implications for the Council process); Marine Protected Areas (MPAs) and associated authorities and initiatives; status of EFH amendments; and, education and public outreach.

A copy of the full agenda is under Item B-1(d). A draft of minutes from the meeting, including Chairmen's positions on MSA reauthorization issues, will be provided at this meeting if available (if not it will be sent in the next Council mailing). Regarding the public outreach issue, there are initiatives by NMFS and the Councils to do a better job of informing the public of the positive aspects of our management process, and the numerous fisheries management success stories around the country. For our own part, we are putting together an informational brochure outlining management in the North Pacific, which will be widely distributed. We expect to have that out by mid-summer.

For your information, Item B-1(e) is a copy of testimony by Council Chairman David Benton, provided on May 9 to the Senate Subcommittee on Oceans and Fisheries.

## Gulf of Alaska Pollock Assessments

Item B-1(f) is a NMFS memo regarding the assessment implications of the winter 2002 GOA pollock surveys. This issue was raised at our last meeting and the Council requested feedback on how this information would be factored into biomass and ABC assessments. This information will also be forwarded to the Plan Team for consideration this fall.

## Community reception

There will be a community reception on Friday night, the 7<sup>th</sup>, sponsored by the City of Unalaska, Unisea, and others, at the Unisea Sports Bar from 6:00 to 8:30 pm. During this reception we will honor long-time Council member Robin Samuelsen for his many years of service to the process. It is open to all and should be a nice break for everyone this week. Please join us there and make a toast, or a roast, to Robin.

## New staff

This is Diana Evans' first meeting as Council staff, since coming to the Council from the consulting firm URS. As I mentioned in April, she is our NEPA Specialist/Fisheries Analyst and will be primarily assigned to continue work on the DPSEIS project with Steve Davis. She will also begin to contribute to other Council projects as well. Welcome aboard Diana!

Post-It® Fax Note 7671		Date 5/8/02	# of pages 1
To David Benton	From Sharon Moesel		
Co./Dept. NPFMC	Co. North American CLS		
Phone # 907-271-2809	Phone # 301-341-1814		
Fax # 907-271-2817	Fax # 301-341-2130		

May 8, 2002

David Benton, Chairman  
North Pacific Fishery Management Council  
605 West 4th, Suite 306  
Anchorage, Alaska 99501-2252

Dear Mr. Benton,

I would like to request an opportunity to speak before the Council, at the June meeting, regarding the Argos VMS. Given the imminent implementation date, I believe an informative and accurate description of the system would be useful. As the only currently approved provider of this system, North American CLS can most appropriately provide this information.

Over the past few Council meetings, a number of inaccuracies regarding the Argos VMS have been propounded. Some of this inaccurate information speaks directly to the validity of the choice and use of the Argos system for fisheries enforcement in Alaska. As an extremely active participant in VMS implementation in both Alaska and the Atlantic HMS fishery, I have a great respect and appreciation for the value of technically and historically accurate information regarding vessel monitoring systems.

I would like the opportunity to describe how the Argos system works, its strengths and limitations, details of the Argos vessel monitoring system, the specific application of the Argos VMS in the Alaskan arena, the use of the Argos VMS in other fisheries around the world, and the process NACLS followed to achieve NMFS-OLE VMS type approval.

As the manager in charge of Argos VMS at North American CLS, I am intimately familiar with the technology. I have also been in charge of the Alaskan Argos VMS program since its inception in 1999. In my position, I work closely with NMFS Enforcement, I regularly attend Council meetings, and I am in close and continual contact with fishing industry Argos VMS users. Thank you in advance for your consideration.

Sincerely yours,

Sharon M. Moesel  
(Master, U.S. Merchant Marine)  
Director of Marketing Operations and Government Relations  
North American CLS, Inc.

cc:

- Chris Oliver: NPFMC, Executive Director
- John Bruce: NPFMC/Advisory Panel, Chairman
- Jim Balsinger; NOAA/NMFS, Alaska Regional Administrator
- Jeff Passer: NOAA/NMFS Office for Law Enforcement, Special Agent in Charge, AED
- Dale Jones: NOAA/NMFS Office for Law Enforcement, Chief
- Otha Easley: NOAA/NMFS Office for Law Enforcement, Special Agent
- Robert Bassett: NOAA/NESDIS, Argos Program Manager
- David Benner: NOAA/NESDIS, Head of Direct Services Division, OSPD



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APR 11 2002

UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910  
THE DIRECTOR

RECEIVED

APR 23 2002

N.P.F.M.C

Mr. David Benton  
Chairman, North Pacific  
Fishery Management Council  
605 West 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Dear Mr. Benton:

I am enclosing the petition for rulemaking on bycatch in all U.S. fisheries that the National Marine Fisheries Service recently received from Oceania. We have just sent to the Federal Register a notice of receipt of this petition requesting public comment for a period of 60 days. Because of the importance and far-reaching nature of this issue, I am sending the petition to each of the Regional Fishery Management Councils and inviting their comments on it.

I would appreciate receiving your views on this very important matter. Please contact Jack Dunnigan in our Office of Sustainable Fisheries (301-713-2334). Thank you for your attention to this important issue.

Sincerely,

*Rebecca Lent*  
for William T. Hogarth, Ph.D.

Enclosure



has proposed, in their application, a system of area closures triggered by dates, water temperatures and/or observed sea turtle interactions, to minimize the impact of the experimental fishery on threatened or endangered sea turtles. This proposal served as the basis for developing an interim final rule to protect sea turtles. This interim final rule (67 FR 13098; March 21, 2002), which is effective for 240 days starting from March 15, 2002, requires monkfish gillnet vessels to move their fishing operations steadily northward at specific points in time, based in part on sea surface temperature information. Participating vessels would be required to comply with the provisions of this interim final rule. In addition, the experimental fishery would terminate immediately if three loggerhead turtles are taken or one endangered sea turtle is taken. NMFS will take the necessary steps to ensure consistency with its obligations under the Endangered Species Act before issuing the EFPs.

EFPs would be issued to three vessels to exempt them from monkfish limited access permit eligibility requirements; DAS and reporting requirements; gear-marking requirements; incidental monkfish possession and landing limits; the minimum fish size requirement (for data collection only); and minimum gillnet mesh size, as required by the FMP (50 CFR part 648, subpart F).

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 12, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

[FR Doc. 02-9327 Filed 4-15-02; 2:41 pm]

BILLING CODE 3510-22-M

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric  
Administration

50 CFR Part 600

[I.D. 040202C]

**Magnuson-Stevens Act Provisions,  
Subpart H; General Provisions for  
Domestic Fishing**

AGENCY: National Marine Fisheries  
Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA),  
Commerce.

ACTION: Notice of receipt of petition for  
rulemaking and request for comments.

**SUMMARY:** NOAA announces receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization concerned with the environmental health of the oceans, has petitioned the U.S. Department of Commerce to promulgate immediately a rule to establish a program to count, cap, and control bycatch in U.S. fisheries. The Oceana petition asserts that NMFS is not complying with its statutory obligations to monitor and minimize bycatch under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA). The petition seeks a regulatory program that includes a workplan for observer coverage sufficient to provide statistically reliable bycatch estimates in all fisheries, the incorporation of bycatch estimates into restrictions on fishing, the placing of limits on directed catch and bycatch in each fishery with provision for closure upon attainment of either limit, and bycatch assessment and reduction plans as a requirement for all commercial and recreational fisheries.

**DATES:** Comments will be accepted through June 17, 2002.

**ADDRESSES:** Copies of the petition are available, and written comments on the need for such a regulation, its objectives, alternative approaches, and any other comments may be addressed to William T. Hogarth, Ph.D., Assistant Administrator for Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301-713-2239. Comments may also be sent via fax to 301-713-1193, attn: Val Chambers. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Val Chambers, telephone 301-713-2341, fax 301-713-1193, e-mail Val.Chambers@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The petition filed by Oceana states that wasteful large-scale bycatch of birds, mammals, turtles, and fish is occurring in the United States and worldwide. The petition cites scientific estimates of bycatch poundage and indicates bycatch of a much larger magnitude. The petition asserts that NMFS is allowing this wastage to continue by not meeting its legal obligations for bycatch under the MSA, ESA, MMPA, and the MBTA.

The petition cites specific legal responsibilities of NMFS for bycatch under each of these statutes and concludes that NMFS must count, cap, and control bycatch under the MSA, ESA, and MMPA and that NMFS must

monitor and report bycatch of seabirds that occurs in fishing operations and take steps to reduce seabird bycatch. For the MSA and related regulations and Federal Court interpretations, the petition cites national standard 9 and other requirements for minimizing bycatch and related mortality, including a standardized reporting methodology for bycatch. The petition concludes that any FMP or regulation prepared to implement an FMP must contain measures to minimize bycatch in fisheries to the extent practicable and argues that greater observer coverage is required. For the ESA, the petition cites the prohibition on taking endangered species and protection of threatened species, including recovery plans to guide regulatory efforts, as well as consultation requirements and incidental take statements. For the MMPA, the petition cites requirements for a regulatory system to avoid and minimize takes of marine mammals reducing mortality or serious injury to insignificant levels, as well as take reduction plans and monitoring of marine mammal takes. For the MBTA, the petition cites the prohibition on taking any migratory bird, including seabirds, except as permitted by regulations issued by the Department of the Interior, and cites Federal case law and Executive Order 13186 as requirements that NMFS ensure that fishery management plans approved by NMFS comply with the MBTA. The petition also refers to the NMFS-issued National Plan of Action for reducing seabird bycatch and the need to prepare a national seabird bycatch assessment.

The exact and complete assertions of nonconformance with Federal law are contained in the text of Oceana's petition which is available via internet at the following NMFS web address: <http://www.nmfs/noaa.gov/sfa/sfweb/index.htm>. Also, anyone may obtain a copy of the petition by contacting NMFS at the above address.

The petition specifically requests that NMFS immediately undertake a rulemaking to meet its obligations under the above statutory authorities and that such rulemaking include the following four actions:

"1. Develop and implement a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries. This task involves several steps (taking into account the diversity of vessel category, gears used, and fishing region): (a) determining how many fishing trips must be observed, where observers should be stationed, and other details; (b) identifying funding sources to support such

observer coverage, including taxpayer subsidies, taxing landings or user fees; and (c) hiring, training, and deploying the necessary observers.

"2. Incorporate reasonable estimates of bycatch into all total allowable catch levels and other restrictions on fishing.

"3. Set absolute limits on the amount of directed catch and bycatch (including non-fish bycatch) that can occur in each fishery, and close the fishery when the applicable catch or bycatch limit (whichever is reached first) is met.

"4. Within 12 months of initiating rulemaking, develop, approve, and implement bycatch assessment and reduction plans for commercial and recreational fisheries. Such plans should include, at minimum, (a) an assessment of the fishery according to its bycatch, including its types, levels, and rates of bycatch on a per-gear basis and the impact of that bycatch on bycaught species and the surrounding environment; (b) a description of the level and type of observer coverage necessary accurately to characterize total mortality (including bycatch) in the fishery; (c) bycatch reduction targets and the amount of directed and bycatch mortality allowed in each fishery to meet the target; and (d) types of bycatch reduction measures (such as closed areas, gear modifications, or effort reduction) that will be employed in the fishery, including incentives for those who use gears that produce less bycatch. Beginning 12 months after rulemaking commences, NMFS should not permit fishing in any fishery that lacks a functioning bycatch plan."

The Assistant Administrator for Fisheries has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether or not to proceed with the development of the regulations requested by Oceana. To this end, NMFS, by separate letter, has requested each of the Regional Fishery Management Councils to assist in evaluating this petition. Upon determining whether or not to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish a notice of the agency's final disposition of the Oceana petition request in the *Federal Register*.

Dated: April 11, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

[FR Doc. 02-9462 Filed 4-17-02; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 654

[L.D. 031402C]

RIN 0648-AN10

#### Stone Crab Fishery of the Gulf of Mexico; Amendment 7

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery for the Gulf of Mexico; request for comments.

**SUMMARY:** NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 7 would establish a Federal trap limitation program for the commercial stone crab fishery in the exclusive economic zone (EEZ) off Florida's west coast, including the area off Monroe County, FL (i.e., the management area) that would complement the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). In addition, Amendment 7 would revise the Protocol and Procedure for an Enhanced Cooperative Management System (Protocol) consistent with Florida's constitutional revisions that transferred authority for implementation of fishery-related rules from the Governor and Cabinet to the FFWCC. The intended effects are to establish a Federal program that would complement and enhance the effectiveness of the FFWCC's trap limitation program and, thereby, help to reduce overcapitalization in the stone crab fishery.

**DATES:** Written comments must be received on or before June 17, 2002.

**ADDRESSES:** Written comments must be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental

assessment should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619-2266; phone: 813-228-2815; fax: 813-225-7015; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Mark Godcharles 727-570-5305, fax 727-570-5583, e-mail [Mark.Godcharles@noaa.gov](mailto:Mark.Godcharles@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the *Federal Register* stating that the amendment is available for public review and comment.

Fishery information available since the early 1980's indicates that the stone crab fishery, in terms of area fished, and numbers of participants and traps, has expanded to a level where the fishery has more participants and traps than necessary to harvest optimum yield. This excessive growth has reduced efficiency in the fishery and failed to increase annual harvest since the early 1990's. Since moratoriums were first implemented (60 FR 13918, March 15, 1995; 63 FR 44595, August 20, 1998), neither Florida nor NMFS has issued new permits for this fishery. On June 26, 2000, Florida adopted its trap certificate program which is designed to reduce the number of traps in the stone crab fishery to an optimal level over about a 30-year period. The FFWCC expects to implement this program by October 1, 2002.

Amendment 7 represents a continuation of cooperative State/Federal efforts to constrain overcapitalization in the stone crab fishery. The state/federal cooperative approach to managing the Florida stone crab fishery was initiated with the development and implementation of the FMP (final rule: 44 FR 53519, September 14, 1979). The fourth management objective in the FMP specified that regulations be developed with the ideal of promoting uniform and consistent management of the fishery in state and federal of the Gulf of Mexico waters off west Florida. In Amendment 7, the Council has proposed the following nine FMP changes to align Federal management of the stone crab fishery with the FFWCC trap reduction program: (1) Recognize, but not require,



# OCEANA

2501 M STREET NW, SUITE 300 WASHINGTON, DC 20037 202.833.3900 WWW.OCEANA.ORG

28 February 2002

The Honorable Donald L. Evans  
Secretary  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, NW  
Room 5851  
Washington, D.C. 20230-0001

Dear Secretary Evans:

Large scale bycatch, the incidental catch of birds, mammals, turtles, and fish, plagues the marine fisheries of the United States and the world. Bycatch endangers vulnerable species and threatens the commercial viability of formerly prosperous fisheries. In order to address this problem in United States waters, Oceana requests, pursuant to 5 U.S.C. § 553(e), that the Department of Commerce, through the National Marine Fisheries Service (NMFS), initiate rulemaking to establish a program to count, cap, and control bycatch in the nation's fisheries. As discussed in detail below, federal law has required such a system for years, yet NMFS has failed to comply with those obligations to date. Further delay in complying with these legal mandates is unacceptable.

Scientists estimate that approximately 44 billion pounds of fish are discarded each year in commercial fisheries world-wide,<sup>1</sup> roughly equivalent to 25% of the world's total landings. This estimate includes only discarded fish bycatch, and excludes retained bycatch, bycatch from recreational fisheries and subsistence fisheries, and unobserved deaths. Additionally, this estimate does not include bycatch of marine mammals, seabirds, or other non-fish species. Therefore, the true amount of bycatch resulting from world fisheries is substantially higher than the current estimate. Applying this estimate to United States' fisheries and relying on data collected by NMFS and others, it is clear that billions of pounds of fish, marine mammals, seabirds, sea turtles, and other non-fish species are caught and wasted as bycatch each year in this country.<sup>2</sup>

Despite clear legal mandates requiring the avoidance and minimization of bycatch, NMFS is allowing this senseless waste of marine life to continue. To count, cap and control bycatch as required by law, NMFS should undertake the following actions immediately:

1. Develop and implement a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries. This task involves several steps (taking into account the diversity of vessel category, gears used, and fishing region): (a) determining how many fishing trips must be observed, where observers should be stationed, and other details; (b) identifying

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<sup>1</sup> Alverson, Dayton L. 1998. *Discarding Practices and Unobserved Fishing Mortality in Marine Fisheries: An Update*. From a Report Prepared For National Marine Fisheries Service, 29 Apr. 1998. Seattle: Sea Grant Washington.

<sup>2</sup> Oceana has published a report that provides further details on the bycatch problem. A copy is enclosed.

funding sources to support such observer coverage, including taxpayer subsidies, taxing landings or user fees; and (c) hiring, training, and deploying the necessary observers.

2. Incorporate reasonable estimates of bycatch into all total allowable catch levels and other restrictions on fishing.
3. Set absolute limits on the amount of directed catch and bycatch (including non-fish bycatch) that can occur in each fishery, and close the fishery when the applicable catch or bycatch limit (whichever is reached first) is met.
4. Within 12 months of initiating rulemaking, develop, approve, and implement bycatch assessment and reduction plans for commercial and recreational fisheries. Such plans should include, at a minimum, (a) an assessment of the fishery according to its bycatch, including its types, levels, and rates of bycatch on a per-gear basis and the impact of that bycatch on bycaught species and the surrounding environment; (b) a description of the level and type of observer coverage necessary accurately to characterize total mortality (including bycatch) in the fishery; (c) bycatch reduction targets and the amount of directed and bycatch mortality allowed in each fishery to meet the target; and (d) types of bycatch reduction measures (such as closed areas, gear modifications, or effort reduction) that will be employed in the fishery, including incentives for those who use gears that produce less bycatch. Beginning 12 months after rulemaking commences, NMFS should not permit fishing in any fishery that lacks a functioning bycatch plan.

Oceana is prepared to assist you in any way that it can to help ensure that NMFS takes these actions.

## **FEDERAL LAW REQUIRES BYCATCH MONITORING AND MINIMIZATION**

Counting, capping and controlling bycatch is required by several federal statutes and their implementing regulations. In particular, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA) require NMFS to count, cap and control bycatch.

### **I. MAGNUSON-STEVENS ACT**

#### **A. Statutory Language**

Congress added explicit bycatch reduction requirements to the MSA in the Sustainable Fisheries Act Amendments of 1996 (SFA), Pub. L. No. 104-297, 110 Stat. 3559 (1996). The SFA added national standard 9 to the MSA, requiring that “[c]onservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” 16 U.S.C. § 1851(a)(9). The SFA also added a requirement that fishery management plans (FMPs) minimize bycatch and bycatch mortality. *Id.* § 1853(a)(11). Therefore, any FMP or regulation prepared to implement an FMP *must* contain measures to minimize bycatch in fisheries to the extent practicable.

The SFA also added the requirement that FMPs “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.” 16 U.S.C. § 1853(a)(11). In order to “assess the amount and type of bycatch occurring in [a] fishery,” a reporting methodology must be reasonably reliable. What is more, the MSA authorizes the Secretary to “require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to [a fishery management] plan,” *id.* § 1853(b)(8), and gives the Secretary “general responsibility to carry out any fishery management plan or



amendment approved or prepared by him,” *id.* § 1855(d). The statute therefore gives the Secretary the authority to require observers and, where they are necessary to properly account for bycatch, requires him to do so.

Most fisheries in the United States rely on logbooks compiled by fishers to monitor the amount and type of marine organisms (including fish, marine mammals, sea turtles, and invertebrates) that are discarded during fishing trips. Especially in light of acknowledged bycatch underreporting in certain fisheries (including New England groundfish and pelagic longlining for highly migratory species), this system cannot be considered reasonably reliable. Thus, the MSA requires greater observer coverage than the extremely meager levels that currently exist.

## B. Implementing Regulations

NMFS has promulgated its interpretation of national standard 9 and the bycatch reporting requirements of the MSA in its national standard guidelines. With respect to reporting, the guidelines provide:

[a] review, and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery . . . . When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

50 C.F.R. § 600.350(d)(1).

With respect to bycatch control requirements, the guidelines require that regional fishery management councils “consider the bycatch effects of existing and planned conservation and management measures.” *Id.* § 600.350(b). See also *id.* § 600.350(d)(2) (requiring analysis of bycatch effects of all measures). In undertaking the required analysis, the guidelines specify that “[t]he priority under [national standard 9] is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive.” *Id.* § 600.350(d). NMFS goes on to list multiple factors that should be considered in evaluating the practicability of measures that could minimize bycatch.<sup>3</sup> See *id.* § 600.350(d)(3).

## C. Federal Court Interpretations

Two federal courts have already held NMFS in violation of the law for its failure to count, cap and control bycatch. The United States District Court for the District of Columbia recently found that the Northeast Multispecies FMP governing groundfish fishing in New England violated the MSA. The court held that “by keeping intact the status quo, [NMFS] refuse[s] to give effect to the clear will of Congress, which expressly directed [NMFS] to more accurately measure and reduce bycatch.” *Conservation Law Found. v. Evans*, No. 00-1134 (D.D.C. Dec. 28, 2001), slip op. at 21. Furthermore, the court found “that after the SFA was enacted, Defendants adopted no new measures to minimize bycatch and bycatch mortality. . . . Such an approach both ignores and frustrates the will of Congress.” *Id.* at 24.

Similarly, in August 2001, the United States District Court for the Northern District of California decided a case concerning the Pacific groundfish fishery. *NRDC v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal. 2001). In

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<sup>3</sup> The guidelines also appear to identify factors that should be considered if a council desires to implement “a management measure that does not give priority to avoiding the capture of bycatch species” because of the “net benefits to the Nation.” 50 C.F.R. § 600.350(d). Because the MSA sets a practicability standard, not a “net benefits” standard, see 16 U.S.C. §§ 1851(a)(9), 1853(a)(11), this section of the guidelines is unlawful. Oceana requests, as part of this petition, that the illegal guidance be rescinded.

that case, environmental groups challenged fishing quotas that were first based on the assumption that there was *no* bycatch of two severely overfished species, and then were amended by relying on data from a 15-year-old study. The court held that

[t]he 1996 SFA amendments to the MSA require that NMFS ‘establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery and . . . minimize bycatch.’ NMFS has not done this. Evidence . . . points to increasing bycatch percentages for bocaccio and lingcod as landing limits necessarily decline to protect the species. NMFS has not accounted for this evidence of increased bycatch percentages in its specifications, instead using static estimates that are 15 years old. NMFS has not observed to [*sic*] its duty to obtain accurate bycatch data. Nor has the agency bothered to explain its decision to ignore these factors and not adjust . . . bycatch percentages in the face of evidence that it should . . . . They are thus “not in accordance with the law.”

*Id.* at 1154 (first ellipsis in original, citation omitted).

In sum, there can be no doubt that NMFS must count, cap and control bycatch pursuant to the MSA.

## II. ENDANGERED SPECIES ACT

The ESA requires NMFS to count, cap and control endangered and threatened species bycatch. The ESA prohibits any take (including bycatch) of endangered species, see 16 U.S.C. § 1538(a), and it also protects threatened species. After a marine species is listed as endangered or threatened, NMFS must prepare and implement a recovery plan to guide regulatory efforts to recover the species. *Id.* § 1533(f).

NMFS may allow endangered or threatened species bycatch resulting from a federally-authorized activity (such as fishing) through an incidental take statement generated after consultation. The ESA requires federal agencies to ensure that their activities do not jeopardize the continued existence of any endangered or threatened species. *Id.* § 1536(a)(2). Thus, in its role as fisheries regulator, when a fishery it authorizes is likely to affect a listed species by taking bycatch, or NMFS proposes to change the regulations for that fishery in a way that is likely to affect a listed species by allowing bycatch, NMFS must consult with the agency that regulates marine wildlife. *Id.* § 1536(a)(3). In its role as the agency that regulates marine wildlife, NMFS, upon being consulted by itself, is required to issue a biological opinion determining whether the fishery is likely to jeopardize the continued existence of the listed species. *Id.* § 1536(b)(3)(A). If NMFS finds jeopardy, it must set forth reasonable and prudent alternatives which would allow the fishery to go forward without jeopardizing the species. *Id.* Moreover, to permit takes NMFS must issue an incidental take statement specifying the impact of the fishery’s bycatch on the species, the reasonable and prudent measures that must be taken to minimize that impact, and the terms and conditions under which the fishery can go forward. *Id.* § 1536(b)(4)(C).

In sum, the ESA tightly regulates the incidental catch of endangered species. The statutory provisions outlined above require NMFS to count, cap and control bycatch of endangered and threatened species.

## III. MARINE MAMMAL PROTECTION ACT

The MMPA, 16 U.S.C. §§ 1361-1421h, establishes a “moratorium” on takes of marine mammals, *id.* § 1371. The Act includes an exception for commercial fisheries, allows incidental takes, but creates a regulatory system that strives to avoid and minimize takes. Specifically, the MMPA provides that “it shall be the immediate goal [of the MMPA] that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate” by April 30, 2001. *Id.* § 1387(a)(1).

The MMPA establishes a complex regulatory system to achieve this goal. The Act requires NMFS regularly to assess marine mammal populations, categorize fisheries according to how often they take marine mammals, develop conservation plans to rebuild depleted marine mammal populations to optimal levels, and produce take reduction plans for fisheries that take depleted marine mammals. 16 U.S.C. §§ 1383b, 1386, 1387.

Within six months of implementation, take reduction plans must reduce take to levels less than the potential biological removal level, defined as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population." *Id.* §§ 1362(20), 1387(f)(2). Within five years, take reduction plans must reduce take to insignificant levels approaching zero. *Id.* § 1387(f)(2). The MMPA requires NMFS to closely monitor marine mammal takes, *id.* 1387(d), and to issue a report by April 1998 describing the progress of the nation's fisheries towards the zero mortality goal, *id.* § 1387(b)(3).

In short, NMFS must count, cap, and control bycatch of marine mammals in order to comply with the MMPA. It has failed to do so. Indeed, nearly four years after the 1998 deadline established by the MMPA, NMFS has not submitted the report on its progress. This delay not only violates the law, it demonstrates that the agency has failed to evaluate its progress in reducing marine mammal bycatch in commercial fisheries. Further, NMFS has failed to meet the requirement to reduce marine mammal bycatch to insignificant levels by April 2001.<sup>4</sup>

#### IV. MIGRATORY BIRD TREATY ACT

The MBTA, 16 U.S.C. §§ 703-712, prohibits taking any migratory bird, including seabirds, except as permitted by regulations issued by the Department of Interior. *Id.* §§ 703, 704. NMFS is required to ensure that its fishery management actions comply with the MBTA. 16 U.S.C. § 1854(a), (b); *Humane Soc'y of the United States v. Glickman*, 217 F.3d 882, 888 (D.C. Cir. 2000) (MBTA applies to federal agencies). An applicable Executive Order requires NMFS to develop and implement, by January 2003, a Memorandum of Understanding with the Fish and Wildlife Service (FWS) that "shall promote the conservation of migratory bird populations." Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds § 3(a) (January 10, 2001). For its part, the FWS states in its Waterbird Bycatch Policy Statement that its goal is the "elimination of waterbird bycatch in fisheries." In sum, NMFS must monitor and report the bycatch of seabirds that occurs in fishing operations and take steps to reduce seabird bycatch.

In February 2001, NMFS issued a National Plan of Action for reducing seabird bycatch. That plan of action deferred taking any action to address seabird bycatch until a national seabird bycatch assessment had been done. Additionally, the document states that it is a voluntary document and does not appear to recognize that NMFS has any responsibility to protect seabirds under the MBTA.

\* \* \* \* \*

In sum, bycatch remains a serious problem in United States fisheries. Several federal laws require NMFS to count, cap and control all forms of bycatch. Pursuant to 5 U.S.C. § 553(e), we formally request that NMFS immediately undertake a rulemaking to fulfill these statutory objectives. We also formally request that this rulemaking include the actions described in the four-point outline at the outset of this letter.

Very truly yours,

---

<sup>4</sup> Marine Mammal Commission (MMC). 2001. Annual Report to Congress 2000. Bethesda, MD: Marine Mammal Commission.

Stephen E. Roady  
President

Enclosure

Cc: The Honorable Conrad C. Lautenbacher, Jr.  
Under Secretary for Oceans and Atmosphere and NOAA Administrator

The Honorable William T. Hogarth, Ph.D  
Assistant Administrator for Fisheries

COMMISSIONERS:

CLIFF ATLEO  
PORT ALBERNI, B.C.  
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IER, AK  
JURIN SECORD  
VANCOUVER, B.C.

# INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA  
AND THE UNITED STATES OF AMERICA

AGENDA B-1(c)  
JUNE 2002

P.O. BOX 95009  
SEATTLE, WA 98145-2009

TELEPHONE  
(206) 634-1838

FAX:  
(206) 632-2983

March 4, 2002

**RECEIVED**

MAR - 8 2002

**N.P.F.M.C**

Mr. Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 401  
Anchorage, AK 99501-2252

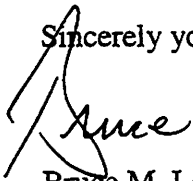
Dear Chris:

First, I would like to offer our sincere congratulations on your confirmation as Executive Director. We have always enjoyed working with you and are very pleased at your appointment.

Second, the International Pacific Halibut Commission would like to nominate Dr. William Clark as its representative to the Bering Sea/Aleutian Islands and Gulf of Alaska Plan Teams. Dr. Clark would replace Mr. Gregg Williams, who has served on the teams since 1990. Mr. Williams has been assigned new duties on our staff which do not allow him to continue. Dr. Clark is the IPHC's chief stock assessment scientist and will bring his expertise to the teams during their assessment meetings.

Dr. Clark's resume is attached.

Sincerely yours,



Bruce M. Leaman  
Executive Director

Encl.

## *Curriculum vitae of William G. Clark*

- Address** International Pacific Halibut Commission  
P.O. Box 95009  
Seattle, Washington 98145  
Tel. 206-634-1838, ext. 219  
Email: bill@iphc.washington.edu
- Born** August 6, 1945, Waltham, Massachusetts.
- Education** B.A., Economics and Mathematics, University of Michigan, 1967.  
Ph.D., Fisheries (Population Dynamics), University of Washington, 1975.
- Family** Married to Elizabeth J. Pfender (1969), three grown children.
- Employment** 1967-69: Burroughs Corporation, New York City. Computer technical representative and later systems programmer.
- 1969-75: School of Fisheries, University of Washington. Graduate studies, including teaching and research assistantships in statistics and fish population dynamics. Dissertation research in Peru.
- 1975-79: Food and Agriculture Organization of the United Nations, Rome. Fishery Resources Officer with responsibility for development projects and resource inventories in Latin America. FAO Observer at meetings of the North Atlantic fisheries commissions (ICNAF and NEAFC). Technical Secretary of the Western Central Atlantic Fisheries Commission (one of the FAO regional bodies).
- 1979-83: School of Fisheries, University of Washington. Research Associate, then Assistant Professor, primarily engaged in assessments of great whale stocks managed by the International Whaling Commission. Active member of the IWC Scientific Committee. Also taught courses in fisheries computing and statistics.
- 1982-83. U.S. Department of Justice, Seattle. Technical Adviser to the Federal District Court in *U.S. v. Washington* (the Boldt case). Served as Chairman of the Fisheries Advisory Board, which was set up to arbitrate frequent disputes between the State of Washington and the Indian tribes over Puget Sound salmon management. Usually the parties could not reach an agreement, and then day-to-day fishery management decisions fell to the Chairman.

1983-88: Washington Department of Fisheries, Seattle. Chief of the Technical Services Division of the Marine Fish Program, which comprised 12-15 employees engaged in biometrics, age reading, computer operations, hydroacoustic surveys, and SCUBA diving.

1988-97: International Pacific Halibut Commission, Seattle. Staff biometrician, singly or jointly responsible for a variety of the Commission's work in the areas of surveys, port sampling, stock assessment, and data management.

1998-present. International Pacific Halibut Commission, Seattle. Senior assessment scientist, responsible for the annual stock assessment.

### **Appointments**

1972: U.S. fishery observer aboard Japanese vessels in the Bering Sea.

1974-75: Consultant to the U.S. Marine Mammal Commission on incidental porpoise mortality in the eastern Pacific tune fishery.

1979-80: Member of the Pacific Fishery Management Council's Groundfish Plan Development Team.

1979-81: Member of the Scientific Committee, International Whaling Commission.

1983-: Affiliate Associate Professor, Fisheries, University of Washington.

1986-88: Member of the Scientific and Statistical Committee, Pacific Fishery Management Council.

1987-93: Member of the Scientific and Statistical Committee, North Pacific Fishery Management Council (Chair, 1991-93).

1994: NOAA Science Review (Fisheries).

1995-present: Various NMFS and DFO advisory panels (overfishing, Steller sea lions, groundfish harvest policy, hake assessments).

## *Publications of William G. Clark*

### **Dissertation**

Clark, W.G. 1975. A study of the virtual population of the Peruvian anchoveta in the years 1962-1972. University Microfilms, Ann Arbor, Michigan. (Ph.D. thesis, University of Washington, Seattle.)

### **Refereed publications**

Clark, W.G. 1977. The lessons of the Peruvian anchoveta fishery. Calif. Coop. Fish. Invest. Rep. 19:57-63.

Clark, W.G. 1981. Restricted least-squares estimates of age composition from length composition. Can. J. Fish. Aquat. Sci. 38:297-307.

Clark, W.G. 1982. Historical rates of recruitment to Southern Hemisphere fin whale stocks. Rep. Int. Whal. Comm. 32:305-324.

Clark, W.G. 1982. Early changes in the recruitment rates of Antarctic minke whales inferred from recent age distributions. Rep. Int. Whal. Comm. 32:889-896.

Clark, W.G. 1983. Apparent inconsistencies among countries in fin whale length measurements. Rep. Int. Whal. Comm. 33:431-434.

Clark, W.G. 1985. Fishing in a sea of court orders: Puget Sound salmon management ten years after the Boldt decision. No. Amer. J. Fish. Man. 5:417-434.

Clark, W.G. 1991. Groundfish exploitation rates based on life history parameters. Can. J. Fish. Aquat. Sci. 48:734-750.

Clark, W.G. 1992. Estimation of halibut body size from otolith size. Int. Pac. Halibut Comm. Sci. Rep. 75: 31p.

Clark, W.G. 1993. The effect of recruitment variability on the choice of a target level of spawning biomass per recruit, p. 233-246. In G. Kruse, D.M. Eggers, R.J. Marasco, C. Pautzke, and T.J. Quinn II [ed.] Management strategies for exploited fish populations. Alaska Sea Grant, Fairbanks.

Clark, W.G. 1999. Effects of an erroneous natural mortality rate on a simple age-structured stock assessment. Can. J. Fish Aquat. Sci. 56:1721-1731.

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- Clark, W.G., and S.R. Hare. 1998. Accounting for bycatch in management of the Pacific halibut fishery. *No. Amer. J. Fish. Man.* 18:809-821.
- Clark, W.G., and S.R. Hare. In press. Effects of climate and stock size on recruitment and growth of Pacific halibut. *No. Amer. J. Fish. Man.*
- Clark, W.G., Hare, S.R., Parma, A.M., Sullivan, P.J., and R.J. Trumble. 1999. Decadal changes in growth and recruitment of Pacific halibut. *Can. J. Fish. Aquat. Sci.* 56:242-252.
- Scott, M.D., W.L. Perryman, and W.G. Clark. 1985. The use of aerial photographs for estimating school sizes of cetaceans. *Bull. Inter-Amer. Trop. Tuna Comm.* 18:383-404.
- Sullivan, P.J., Parma, A.M., and W.G. Clark. 1999. The Pacific halibut stock assessment of 1997. *Int. Pac. Halibut Comm. Sci. Rep.* 79.
- Trumble, R.J., G. St-Pierre, I.R. MacGregor, and W.G. Clark. 1991. Evaluation of Pacific halibut management for regulatory area 2A. *Int. Pac. Halibut Comm. Sci. Rep.* 74: 44p.

DRAFT AGENDA  
(Revised May 20, 2002)  
Annual Council Chairs and EDs meeting  
May 29-30, 2002 - Sitka, Alaska

Tuesday May 28

- 9:00 am - 5:00 pm:** Council Chairs, Vice-chairs, and Executive Directors meet at Centennial Hall.  
**9:00 am - 5:00 pm:** NMFS and other agency representatives meet separately at Centennial Hall.  
**6:00 pm:** Meet at the Channel Club on Halibut Pt Road for social and dinner (about 5 minute drive from SheeAticka Hotel). We have reserved a portion of the restaurant for the group, and shuttles will be available from the Hotel.

Wednesday May 29

**8:30 am - 8:45 am:** Opening remarks from host Council and NMFS.

**8:45 am - 10:45 am:**

- A. MSA Reauthorization and other legislative initiatives.
1. Briefing from Congressional staff
  2. Review NMFS position document, and proposed Bill language if available
  3. Review of Chairmen's positions on issues from last May (at a minimum would include IFQs, observer program language, economic data and confidentiality, fees, bycatch, ecosystem management, etc)
  4. Additional issues: Update on IFQ workshop in Galveston; 5-year retrospective on SFA (NMFS); Oceana petition/bycatch issues, Council response(s), and protocols/regulations governing petition process; implications of recent Pacific bycatch lawsuit

**10:45 - 11:00 am:**

- B. Report from NMFS Science and Technology Division (general focus, Cooperative Research funds, electronic logbook program).

**11:00 - 11:30 am:**

- C. U.S. Coast Guard report

**11:30 - noon:**

- D. Update on 2002 annual Status of Stocks report to Congress and discussion of process and format for future reports.

**1:15 - 2:30 pm:**

- E. Budget issues
1. 2004 Budget request
  2. Detail of observer program funding nationwide for 2002, 2003 and 2004 and NMFS policy on funding priorities.
  3. VMS funding
  4. Joint enforcement agreements and associated funding (may be written report)
  5. Performance measures as a yardstick for funding priorities.

**2:30 - 3:00 pm:**

- F. ESA litigation and issue of Council standing. Hawaii longline association suit (NOAA GC lead). Update on NPFMC independent legal review

May 29, continued

**3:00 - 4:30pm:**

- G. Regulatory streamlining (NMFS lead - includes discussion of NMFS report to Congress, potential guidelines and Council coordination, NEPA vs MSA, multi-year TAC specifications, recent litigation, NEPA positions, etc)

**4:30 - 4:45 pm:**

- H. Procedure and schedule for review and approval of Council SOPPs

**4:45 - 5:00 pm:**

- I. Ocean and PEW Commissions update

**6:30 - 9:00 pm:** Reception with food and drinks (and some entertainment!) at the Centennial Hall

Thursday May 30

**8:30 am - 11:15 am:**

- J. Discussion of Executive Order and MPA initiative, including NOS and DOI perspectives. Review list of relevant authorities. Review workplan for the Santa Cruz Science Center.

**11:15 - 11:30 am:**

- K. Coral Reef Task Force and funding issues - status report

**11:30 - 11:45 am:**

- L. Update on NAPA study of NMFS ability to meet mission requirements

**11:45 - noon:**

- M. Status report on electronic rulemaking initiative

**1:15 pm - 3:00 pm:**

- N. Discussion of education/public outreach campaign - recent NMFS activities, individual Council initiatives, and potential collaborative efforts. Extent that litigation is encumbering our efforts.

**3:00 pm - 4:00 pm:**

- O. Status report on EFH lawsuits and development of EISs. Status of Generic socio-economic work by NMFS. (Review agreement with dates and deadlines; one-page summary of where each Council is in the process; Kurland summary from National workshop)

**4:00 pm - 4:45 pm:**

- P. Other issues: international trade negotiations; FAO capacity reduction initiative; status of NMFS capacity assessments; general litigation influences

**4:45 pm - 5:00 pm:** Discuss timing/location for 2003 Chairs meeting

**6:00 pm - 9:00 pm:** Evening social (and maybe a short cruise) aboard 225' Coast Guard buoy tender. Food provided.

Friday May 31

**9:00 am - noon:** Councils-only meeting

Testimony of Mr. David Benton, Chairman  
North Pacific Fishery Management Council  
to the  
Senate Subcommittee on Oceans and Fisheries  
May 9, 2002

Introduction

Good morning Mr. Chairman. For the record, my name is David Benton. I serve as the Chairman of the North Pacific Fishery Management Council. I also serve as the Chair of the North Pacific Research Board, a multi-agency organization which is establishing a long-term, comprehensive marine research program for the North Pacific and Bering Sea. The NPRB is newly formed, but will over time administer a multi-disciplinary research program providing research funding at about \$10-15 million per year.

First off, I want to thank you for the opportunity to offer comments to the Committee on our fisheries management process. I would like to touch on two major areas today. Of course, because I am from Alaska, I want to highlight for you some of our successes as well as the issues facing the North Pacific Fishery Management Council as we work to conserve the vast marine resources of the North Pacific. I also want to discuss with you some of the issues facing all the Councils.

NORTH PACIFIC FISHERIES MANAGEMENT

I am going to start with the North Pacific. Needless to say, we in Alaska are proud of our record in meeting conservation goals and maintaining healthy fisheries. Working together with the National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game, we have been very successful at managing the federal fisheries off Alaska. Given the focus of this hearing and the time constraints, I will not provide the endless details or numerous examples of these accomplishments; however, they need to be recognized and I have provided a supplemental folder of materials that summarize the overall management philosophy of the North Pacific Council and provides examples of what we are doing to conserve fish stocks, protect habitat, manage and reduce bycatch, and incorporate ecosystem considerations into fishery management decisions. I hope that these materials, which are in the white folder with our Council logo, along with my testimony, will be of use to the Committee as you consider what is right with our fishery management system as well as ways we can strengthen it.

Alaska's fisheries are valued at over \$1.1 billion annually, before processing, and provide over half the volume of fish landings in the United States. They are a powerful economic engine for coastal communities off Alaska, and provide tens of thousands of jobs in the fishing and processing industries throughout Alaska and the Pacific Northwest. With so much at stake, the North Pacific Council has approached fisheries management with an eye towards long-term sustainability of marine resources. Our formula for sustainable fisheries involves strong science and research programs, an effective reporting and inseason management program, a comprehensive observer program, limitations on fishing capacity, precautionary and conservative catch limits, strict limits on bycatch and discards, habitat protection measures, incorporation of ecosystem considerations, and an open public process that involves stakeholders at all levels. Here are some examples:

#### Precautionary and Conservative Catch Limits

Annual catches of our fish stocks are controlled by strict harvest limits (which includes all catch for each species whether targeted, retained, or discarded). The Council establishes annual harvest limits for each stock at a level that never exceeds a biologically safe and precautionary harvest level recommended by the scientists on the Plan Teams or Scientific and Statistical Committee. Our scientists set harvest levels in a precautionary manner; when less is known about the dynamics of a stock, the more conservative the harvest rate. Fisheries are closely monitored and closed when the harvest limits are reached. As an additional precautionary measure in the Bering Sea, the combined annual harvest limits for all species is limited to no more than 2 million metric tons, which is only about 65% of what could be safely removed without impacting fish stocks. The application of conservative catch limits has resulted in sustainable catches. Annual North Pacific groundfish harvests have been sustained in the 1.5 - 2.5 million metric ton range (3 - 5 billion pounds) for the past 30 years.

All of our groundfish stocks are considered to be at healthy biomass levels. None of our groundfish stocks are considered to be 'overfished'. I should note that I dislike that term 'overfished' because it implies that stocks got to low levels because of fishing, when in many cases the causes are related to environmental change or other factors. The marine ecosystems off Alaska are dynamic, and fish stocks increase or decrease in response to environmental changes, and generally not in response to the levels of fishing mortality found in our fisheries today. Of course, prior to the Magnuson Act, and even into the 1980's, some stocks suffered from fishing pressure largely from foreign fisheries. But today's management takes into account total mortality, and sets very conservative harvest limits to ensure sustainability.

For the two crab stocks in our region that are considered to be overfished, we implemented aggressive rebuilding plans - the fisheries have been closed entirely - even though scientific data indicated that abundance of these stocks depends almost entirely on environmental factors. And, bycatch in other fisheries has been significantly constrained. Due to these efforts, we are seeing some improvements, but recovery will ultimately depend on ocean survival conditions which appear to be dependent on long term environmental factors.

However, in our quest to always look for better ways to meet our obligation to conserve our nation's fishery resources, the NPFMC has recently established an independent scientific review process to look at our overall harvest strategies, especially the process and science which we use to establish harvest rates. The Council has contracted a group of independent, international experts to critique our system and make recommendations for improvements. We expect to receive their report later this year.

#### Observer Program and Inseason Catch Monitoring

Our comprehensive observer program (averaging about 36,000 observer days annually) and inseason monitoring program are integral to the conservation of our resources. Observers measure catch and bycatch and collect biological information. Observers are required on all vessels longer than 60 feet, and at all but the smallest shoreside processors. Observers are placed on vessels and processing plants through a NMFS-certified contractor, and the costs for the observers are borne by industry, not by the government. Inseason managers at NMFS use information provided by the fleet on weekly catch and processing reports, as well as daily information from onboard observers, to manage complex area and seasonal quotas. The combination of timely reporting and observer information allows managers to monitor catch levels and close fisheries so that catch and bycatch limits are not exceeded.

#### Bycatch Reduction

The Council has been concerned about bycatch of non-target organisms since the implementation of the first fishery groundfish management plan in 1979. Catch limits have been placed on species traditionally harvested by other gear types (halibut, crab, herring, and salmon). The intent is to minimize the impacts of bycatch on non-target populations while at the same time allowing directed fisheries to be prosecuted. For example, current allowable bycatch levels in the Bering Sea and Aleutian Islands area equate to less than 1% of the halibut, crab, herring, and chum salmon populations. Bycatch of chinook salmon has slightly larger

impacts, in the order of 2% to 3%, and the Council is pursuing several initiatives to further reduce this level. In addition, the Council has initiated work to adopt salmon bycatch controls in the Gulf of Alaska in addition to controls already in place on halibut.

Another type of bycatch is comprised of target and non-target species that are caught but then discarded. This discard bycatch is thrown back into the sea and considered wasteful by many. We have made considerable progress in reducing this type of bycatch. For example, in 1993, over 17% of the groundfish caught off Alaska were discarded. By 2001, less than 7% of the catch was discarded. In raw pounds this equates to a discard of about 350 million pounds in 2001, down from over 800 million pounds in 1993. This reduction is partly due to implementation of full retention and utilization requirements - you catch it, you keep it - for major species such as pollock and cod. The fishing industry has also worked to reduce bycatch in a voluntarily manner by sharing catch information and modifying gear to allow unwanted fish to escape. Additionally, the formation of cooperatives in the Bering Sea pollock fishery, as prescribed under the American Fisheries Act, ended the race for fish. This allowed vessels to slow down fishing operations, and combined with our ongoing bycatch reduction efforts resulted in further reducing bycatch and discards. The cooperatives also aided the development of additional markets for lower valued species, and significantly increased utilization rates (pound of product per pound of raw fish harvested).

Further reductions in discards will be achieved with full retention requirements for flatfish, which are currently scheduled to be implemented in 2003. We also are continuing to evaluate additional approaches to bycatch reduction, including assignment of individual vessel accountability, bycatch avoidance techniques, and bycatch pools under a cooperative-style approach.

The Council recently started a new initiative to look broadly at further bycatch reductions. As Chairman, I will be appointing a stakeholder committee to review each of our various fisheries and make recommendations for programs to further reduce and manage bycatch. In reality, this is a resumption of work the Council had been engaged in a few years ago, but was put on hold because of the need to respond to litigation, mostly to do with procedural problems under NEPA.

## Habitat Protection

We all know that most fishery resources depend on healthy sea floor habitat. Although scientists have only a limited understanding of the distribution of benthic habitats off Alaska, and how these affect fish production, the Council has established numerous marine protected areas to reduce potential effects of our fisheries on habitat. Bottom trawling has been prohibited from a large portion of the continental shelf to protect sensitive fish and crab habitats. Closed areas in the Bering Sea total more than 30,000 square nautical miles, bigger than the state of Maine. Closed areas in the Gulf of Alaska are even larger, totaling about 45,000 square nautical miles. Management measures related to protection of Steller sea lions were implemented this year which include additional closures of vast areas of the Gulf of Alaska, Bering Sea, and Aleutian Islands to trawling, and in many cases, to all fishing with any gear type.

This work was in progress several years ago following the passage of the Sustainable Fisheries Act in 1996, but was subsequently put on hold due to lawsuits filed by the environmental community. They prevailed on procedural matters, with the overall effect that work on habitat protection essentially stopped until NEPA requirements were addressed. The Council is back at it though, currently working on an accelerated time line to develop and implement alternatives to improve the essential fish habitat protection program off Alaska. We are conducting a thorough evaluation of our fisheries, through an EIS process, and expect to recommend significant actions in 2003.

## Ecosystem Considerations

Over the past several years, the Council has been developing an ecosystem-based approach for management of our groundfish fisheries. The principles and elements of our approach are essentially the same as recommended by the Ecosystem Principles Advisory Panel in their report to Congress and by the National Academy of Sciences in their report on sustaining marine fisheries. In fact, one of the authors sits on our Council and chairs our Ecosystem Committee. While we have yet to take the next step and develop specific fishery ecosystem plans, our strategy is to minimize potential ecosystem effects while allowing for sustainable fish removals as we gain the knowledge necessary to implement more specific measures.

In the meantime, a number of measures have been implemented to reduce potential effects of fisheries on marine mammals and seabirds. As a precautionary measure, directed fisheries for forage fish species are prohibited. In addition, we have dispersed fisheries over time and space to reduce potential for competition



with Steller Sea lions, and prohibited vessels from fishing too close to the areas of land on which they haul out or give birth. To reduce seabird bycatch in longline fisheries the Council recently approved a suite of regulations requiring vessels to use deterrent devices. These are some of the more stringent measures in the nation and possibly the world. And, while it is anticipated that these deterrent devices will reduce seabird bycatch by over 80%, the Council is also committed to working with the U.S. Fish and Wildlife Service to review and improve seabird avoidance measures in the future.

In concluding my remarks on North Pacific fisheries issues, I want to emphasize that the North Pacific Fishery Management Council is committed to conservation. We do our best to base our decisions on sound science and when there is a question, we try to err on the side of conservation. In recent years, much of our effort has, unfortunately, been focused on responding to litigation, most of which focuses on procedural matters. This has thwarted our efforts to take up new initiatives to manage and reduce bycatch and protect important fisheries habitat. We have a very transparent process that relies on the participation of all sectors of the public. Again, unfortunately, much of the litigation we are addressing comes from special interests that have decided to not participate in this very public forum. Apparently, they prefer to go to court, and then get in a closed room and conduct backroom negotiations with federal attorneys. Away from the public eye. Away from the science based deliberations that Congress intended when you established the Magnuson Stevens Act and NEPA, and the other relevant statutes.

#### GENERAL FISHERIES MANAGEMENT ISSUES

I believe that the current system, a collaboration between the Regional Fishery Management Councils, NMFS, and the states is the appropriate process for management of our Nation's fisheries resources. When it is carried out properly, this process has all the ingredients for responsible decision-making. It is based on science. It is deliberative. It is transparent. It is representative. And, where it has failed to meet the conservation test, it is not because of the structure, but because of implementation. With regard to the National Marine Fisheries Service, there are several levels of review ongoing relative to NMFS' organizational structure and its ability to meet mission requirements under multiple authorities. I believe that Dr. Hogarth is working hard to address the problems facing the agency. Rather than focus on organizational structure of the agency, or specific budget and management processes, I would like to provide my thoughts on a few overriding issues relative to the collective Council/NMFS management process. I believe these are fundamental problem areas that you should be aware of that are impeding our ability to collaboratively accomplish our management mission. I also want to point out that several of these issues are discussed in the

comments of the Council Chairs regarding MSA reauthorization, which I have attached to my testimony for your information.

### Litigation gridlock

Litigation is currently the most pressing problem facing the agency, and attempting to gird our process against this litigation is threatening to cripple our management process. Because of conflicts regarding procedure under various statutes, the door is open to often frivolous lawsuits over procedural issues, which have the perverse effect of thwarting necessary conservation action. While judicial remedy should be available to address real shortcomings in our management programs, the Catch-22 is that we have reached a point where litigation is seriously impeding our very ability to effectively manage our fisheries and comply with Congressional direction. Whether this is by design, or an inadvertent result, I can't say. I can only note that the very interest groups who are calling the loudest for dismantling the Council process are often the same groups engaged in these procedural lawsuits.

For example, there has been a dramatic trend in litigation to exploit the mismatch between NEPA and the Council process, and circumvent the very public process envisioned by this and other Acts, by attempting to use the courts to achieve their desired end game, rather than participate directly in the Council process. Settlement negotiations between NOAA attorneys and plaintiffs, which often follow, further circumvent the process by avoiding the deliberative, public processes envisioned under all of the Acts. In some cases, litigation ostensibly aimed at conservation objectives has actually impeded implementation of conservation measures recommended by the Councils. Essential Fish Habitat (EFH) is a prime example, where several of the Councils' proposed EFH amendments (intended to comply with the 1996 Sustainable Fisheries Act), were challenged as inadequate. As I understand it, the plaintiffs were successful under the NEPA claim that the EIS was deficient. The net result of this litigation and attendant settlement negotiations is at least a three year delay in implementation of amendments which would have defined and provided protection for EFH and Habitat Areas of Particular Concern (HAPC), while the Councils and NMFS undertake development of a new and comprehensive Environmental Impact Statement to implement EFH protections.

Similarly, the North Pacific Council and NMFS have been, over the past three years, attempting to develop a comprehensive, programmatic-level EIS for our groundfish Fishery Management Plans. Through court orders and settlement negotiations, where plaintiffs are attempting to directly influence the outcome of the EIS process, completion of that EIS has been delayed for at least an additional year, more likely two. The

Council and NMFS devote thousands of hours of valuable, limited staff resources to these litigation-driven exercises, compromising our ability to focus time and resources to address real management and conservation issues. It is further frustrating that many of the groups who are criticizing the current fisheries management process have not attempted to participate in that process; rather, they have simply turned to litigation as their primary means of influencing fisheries policy and regulations.

### Conflicting Acts

Among the recommendations from the Council Chairs is the need for clarification of the authorities and requirements among the primary Acts governing our process. The Magnuson-Stevens Act (MSA) outlines a process for public participation, extensive supporting analyses, and public participation that is similar in scope to that outlined under the National Environmental Policy Act (NEPA). However, there are some fundamental differences between these Acts, and some fundamental mismatches between the fisheries management process outlined under MSA and the process requirements under NEPA. It is these process requirements under NEPA that most often provide for litigation opportunities, regardless of the validity of the underlying science or the completeness of the analyses which support a proposed management action. And more importantly, often times despite the conservation benefits of the proposed action as well. It appears that the process and requirements for fisheries management plans and amendments as outlined under MSA satisfies most of the letter of NEPA and certainly all of the intent of NEPA, relative to analysis, public participation, and ultimately, environmental conservation. The attached Council Chair's recommendations contain specific reference to this issue, and proposes clarification that failure to comply with NEPA in the management of a fishery under MSA should result only in judicial guidance regarding NEPA compliance, rather than judicial management of, or injunction against, a fishery unless there is a clear MSA violation.

In addition to the litigation opportunities for procedural lawsuits under NEPA, there are some additional problems which result from our attempts to comply with both statutes. In the North Pacific, we are currently in the process of altering our annual quota-setting process so that establishment of Total Allowable Catch (TAC) levels will go through a complete and formal rulemaking process under NEPA, including lengthy public comment periods at both the Council level (before final recommendations by the Council) and the Secretarial level (in reviewing the Council's recommendations). Currently the Council sets quotas each fall for the upcoming fishing year, based on just-completed scientific survey data. One of the keys to success in avoiding overfishing is to use the most up-to-date scientific information to judge the health of fish stocks and adjust harvest accordingly. Under the proposed change, which is being suggested by NMFS to comply with

NEPA procedural requirements, quotas would be set on year-old survey data rather than on the best, most recently available scientific information, as mandated by the MSA. This is one example of a perverse, and presumably unintended consequence of the literal application of NEPA procedures to our management process.

Our Council is currently attempting to conduct an independent legal review of issues surrounding the intersection of these various Acts, including MSA, NEPA, and the Endangered Species Act (ESA). We hope that this legal review will better inform us how to balance the requirements among these Acts, as well as clarify NMFS and the Councils' respective roles in promulgating management measure under these Acts.

### Regulatory Streamlining

NMFS has recently undertaken what is being labeled 'regulatory streamlining', in an attempt to ensure that all proposed fisheries management programs are legally consistent with the provisions of the Acts mentioned above, as well as other applicable laws. One aspect of this initiative would require all Fishery Management Plans, or amendments to those plans, to illustrate full compliance with NEPA and other laws prior to action by a Regional Council. NMFS hopes that this will better enable the Councils to make informed decisions and will, ideally, better enable the agency to defend these decisions against potential litigation. However, given the unique nature of the Council process, coupled with the process requirements under NEPA, there are concerns whether this initiative will ultimately be successful without some clarifications as to the relative applicability of NEPA vs applicability of the MSA. Again, the Council Chair recommendations contain specific reference to this concern, and suggest a potential remedy which would help define a more reasonable application of NEPA to our process, without jeopardizing the underlying environmental conservation objectives of this Act or the MSA.

### Conclusion

There have been allegations recently that the Regional Council system is ineffective at addressing conservation objectives of the Magnuson-Stevens Act, and even suggestions that the Council system should be scrapped altogether, or, limited to only allocation decisions. This is a seductive bit of sloganeering that ignores some of the most fundamental lessons of fishery management. Much of the business of managing fisheries involves both conservation and allocation, and more often than not allocation and conservation issues cannot be separated. While some regions have been more successful than others at implementing the

baseline, conservation oriented management measures necessary to preserve and sustain these valuable resources, the Council process can work effectively to address both conservation and allocation issues. I can cite numerous examples of where our Council has taken the lead and approved conservation measures above and beyond that deemed necessary based on agency advice. These include the Pacific ocean perch rebuilding plan; the Southeast Alaska trawl closure; the 2 million mt OY cap in the Bering Sea; Bering Sea closures to protect depleted crab stocks, and the closure of the Aleutian Islands pollock fishery. I submit that fisheries in the North Pacific are a shining example of the ability for this process to directly address conservation objectives, and balance the allocation objectives that often come into play. It is this collaborative process between the Councils, the Department of Commerce, and the public that the drafters of the Magnuson-Stevens Act envisioned, which allows for an informed group of stakeholders and managers to craft fisheries regulations that take into account specific regional considerations.

This is not to say that our system is perfect by any means, or that there is not room for improvement. There are a number of issues we still need to address, such as fishery rationalization in our remaining open access fisheries, and the effects of such programs on conservation and communities, as well as the immediate distributional effects on participants. We need a greater understanding of ecosystem processes to allow us to manage with more of an ecosystem perspective. We need to continually engage in self assessment of our science programs, and our management strategies. And, we need to make the system more user friendly so that a broad cross section of stakeholders is engaged in a transparent process. We need to solve the conflicts among statutes to cut the chain of paper chase litigation so we can focus on the business of managing our marine resources in a responsible manner. NMFS, with input from the Councils, is working hard to achieve a more efficient regulatory process, and to ensure that our fisheries plans and regulations meet the tests outlined by various Congressional statutes. I believe this process is improving, and we stand ready to respond to any directions that come out of the Magnuson-Stevens Act reauthorization process or other Congressional actions. Again, I appreciate the opportunity to speak to you today on these issues. Thank you.



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MEMORANDUM FOR: Rich Marasco, Gary Stauffer  
FROM: Martin Dorn  
SUBJECT: Assessment implications of winter 2002 surveys of GOA pollock  
DATE: April 19, 2002

The 2002 acoustic survey in Shelikof Strait found very low biomass of adult pollock in Shelikof Strait. The preliminary estimate of biomass greater than 40 cm is 41,000 t, representing a decrease of 64% from last year. Total biomass in Shelikof Strait decreased by 38%, and is the lowest in the time series. Discussions with the chief scientist indicated that the timing and the methods used during the 2002 survey were consistent with previous surveys. However, the mean GSI index (ovary weight/body weight), used to monitor egg development, was lower in 2002 than in any survey since 1989. The percent of pollock in spawning and post spawning condition was also low in comparison to previous surveys. The reason for these unusual patterns of pollock spawning behavior is not known.

To evaluate the assessment implications of low adult biomass in Shelikof Strait, I updated the 2001 assessment model with the Shelikof survey results. Results are given below:

Table 1. Estimates of pollock spawning biomass (percent of unfished in parentheses)

	Last year's assessment	Updated model run
2002	159,000 t (26%)	151,000 t (25%)
2003	175,000 t (29%)	186,000 t (30%)
B0	612,000 t	
B40	245,000 t	
B20	122,000 t	

The relative minor changes in stock status in 2002 are because the model doesn't fully "believe" stock size to be as low as indicated by the survey, i.e., the model estimated biomass is higher than the observed survey biomass. The updated model suggests that a "risk-neutral" estimate of current status is above the overfished level ( B17.5%), and above sea lion protection measure threshold of B20%. The figure below shows that overfishing should not occur this year if the fishery is allowed

to proceed. It is important to recognize that all of these estimates are subject to change as additional data become available. By fall of this year, we will have new ADF&G crab-groundfish survey results, and age composition from the 2002 Shelikof survey and the 2001 fishery.

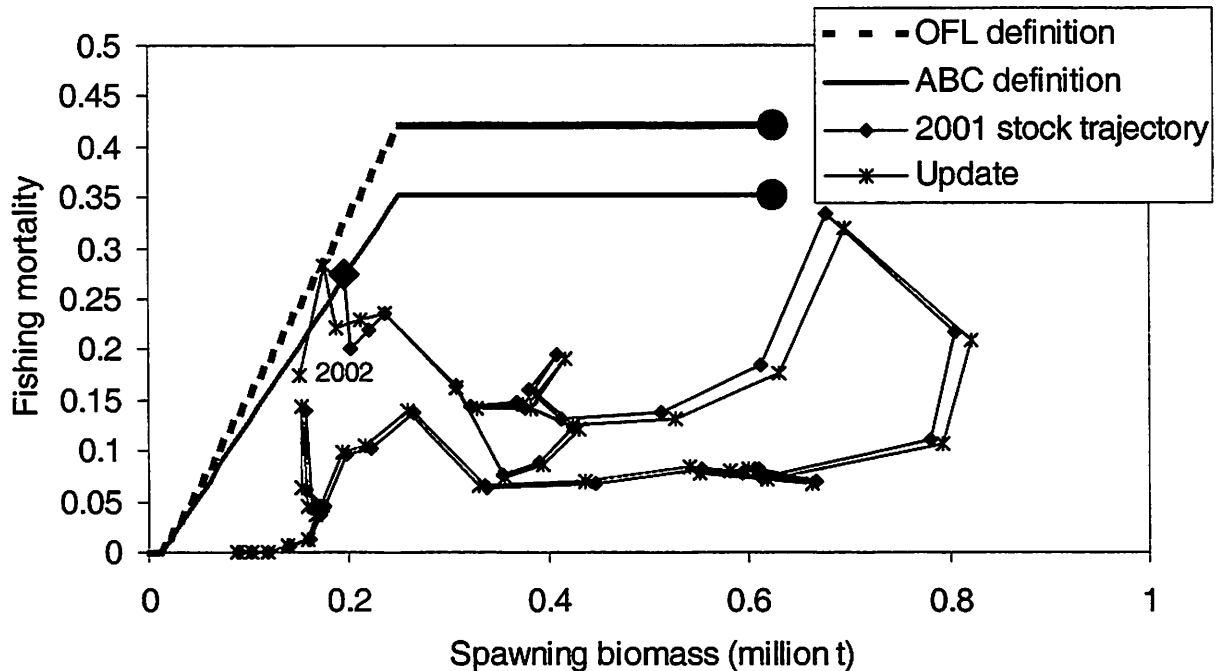


Figure 1. Trajectory of spawning biomass and fishing mortality for GOA pollock. The updated model includes preliminary biomass and size composition estimates from the 2002 Shelikof Strait acoustic survey.

A complication is that if the relatively strong 1999 year class is used in the average to calculate  $B_0$ , the estimate of  $B_0$  will increase by about 7%. Paradoxically, the current status of the stock would appear to be worse when strong incoming year has been detected, but which has not yet begun contributing to the spawning biomass. If this estimate of  $B_0$  is used, spawning stock biomass in 2002 would be 23% of unfished rather than 25%. Although the estimate of 1999 year class is smaller than estimated last year, it still appears to be large enough (above the long-term average) to cause spawning biomass to increase in 2003 and later. In fact, unless a relatively conservative estimate of the 1999 year class is used, the ABC will tend to increase in 2003 even with low Shelikof Strait biomass estimate in the model.

In addition to the annual Shelikof Strait survey, several other areas in the GOA were surveyed by this winter. The preliminary biomass estimate for Shumagin Island area showed an increase of 25% from last year. Several opportunistic "mini-surveys" were conducted by the *R/V Miller Freeman* based on discussions with fishermen. A survey along the shelf break near Chirikof Island found significant aggregations of adult pollock immediately outside of Shelikof Strait in an area where the

fleet was operating. The relationship between these fish and the Shelikof Strait spawning population is unclear. Survey methods were comparable to the Shelikof Strait survey and pollock aggregations along the shelf break were suitable for acoustic surveying, so a solid biomass estimate could be obtained. The opportunistic surveys in Sanak Island Gully and Pavlov Bay did not include target identification sampling due to mechanical problems, so biomass estimation is problematic.

Conducting opportunistic surveys brings a broader perspective to interpreting the Shelikof Strait survey results, and helps to address fishermen's immediate concerns about surveys "missing the fish." Nevertheless, management of pollock in the GOA is based on an assessment model that requires a consistent survey time series to provide inferences concerning population status and trend. There are various ways to incorporate the opportunistic survey data in the assessment, but they would be relatively *ad hoc*, for example, by adding the shelf break biomass to the Shelikof survey biomass for the 2002 estimate. However, the scientific basis for *ad hoc* adjustments is relatively weak, and for that reason should be avoided. The table below shows preliminary biomass estimates for all surveys in the GOA.

Table. Preliminary biomass estimates from 2002 acoustic surveys in the GOA.

Area	Biomass estimates	
	Total	Biomass > 40 cm
<b>Major spawning sites</b>		
Shumagin Islands	136,000 t	129,000 t
Shelikof Strait	229,000 t	41,000 t
<b>Opportunistic surveys</b>		
Pavlov Bay	2,000 t*	1,600 t*
Sanak Trough	30,000 t*	24,000 t*
Chirikof (shelf break)	82,000 t	82,000 t
<b>Total</b>	<b>479,000 t</b>	<b>277,000 t</b>

\*Pavlov Bay and Sanak Trough estimates are highly uncertain. A conservative assumption Assuming that 80% of the biomass was > 40cm

Approximately 25,000 t of 2002 quota remains to be taken. This is 9% of total surveyed biomass greater 40 cm, which can be considered a minimum estimate of the adult population biomass. Even under a worse case scenario, in which the surveys found all the adult biomass, allowing the fishery to proceed would not impose excessive mortality on the remaining population.